A.No.2282 of 2021

in

C.S.No.331 of 2020

10.02.2022

MASTER

ORDER

1. This application is filed by the applicants/defendants to grant leave to defend the suit in C.S.No.331 of 2020.

2.1. It is the case of the respondents/plaintiffs that the plaintiffs and the defendants reside in the same apartment complex. Both the families are acquainted with each other. In view of the friendly relationship between the both the families, defendants had approached the plaintiffs for availing personal loans for various purposes.

2.2. It is the further case of the plaintiffs that the plaintiffs had initially disbursed a sum of Rs.40,00,000/- from 15.08.2016 to 16.12.2016 to the Defendants in various transactions. The defendants had repaid the entire amount with interest without defaulting on the same. Subsequent to the said transactions, the defendants had once again approached the plaintiffs in May 2017 for availing personal loans. The plaintiffs once again decided to lend money to the defendants.

A total sum amounting to Rs.2,76,50,000/- from 19.05.2017 to 20.08.2018 was disbursed to the defendants. The said amounts were disbursed through the bank accounts maintained with HDFC Bank, G.P.Road Branch by issuing cheques to the defendants.

2.3. It is the further case of the plaintiffs that the defendants had undertaken to pay the same jointly and severally and also executed promissory notes in favour of the plaintiffs and the same was acknowledged in writing on stamp paper dated 08.12.2017. The defendants initially made part payments in various transactions towards principal and interest. However, after a period of time, the defendants had failed and neglected to make any payments. On 10.06.2019, a reconciliation of accounts was carried out between the plaintiffs and the defendants and it was ascertained that a sum of Rs.3,75,10,000/- was payable to the plaintiffs. The defendants admitted liability in writing on stamp paper and acknowledged the sum payable by them to the plaintiffs. A total sum of Rs.3,75,10,000/- was payable by the defendants to the plaintiffs as on 15.05.2019.

2.4. It is the further case of the plaintiffs that despite acknowledging the same in writing, the defendants did not come forward to effect any payment. The plaintiffs once again approached the defendants for payment of Rs.3,75,10,000/-. The defendants once again acknowledged liability in writing on stamp paper dated 15.07.2019 and issued 12 post dated cheques on various dates totalling to a sum of Rs.3,75,10,000/-. After issuing the cheques and promissory notes for a sum of Rs.3,75,10,000/- and despite admitting liability, the defendants once again sought time from the plaintiffs to clear the outstanding sum and further requested the plaintiffs not to deposit the cheques citing financial crisis. The defendants further acknowledged liability in writing on 02.12.2019 and confirmed the balances payable to the plaintiffs.

2.5. It is the further case of the plaintiffs that on account of non-payment by the defendants, the plaintiffs once again contacted the defendants giving them a final chance to clear outstanding payments. A joint memorandum of understanding dated 09.01.2020 was also entered into by the family members of both the plaintiffs and defendants wherein it was unequivocally acknowledged by the defendants that a total consolidated sum of Rs.3,75,10,000/- was jointly and severally payable by them to the plaintiffs. The defendants further issued fresh cheques and the same were recorded in the MoU dated 09.01.2020. The defendants further agreed to give a charge on the properties belonging to their partnership firm on default of loan.

2.6. It is the further case of the plaintiffs that after issuing the said cheques, in view of the lockdown measures announced by Government of India due to Covid-19 pandemic situation on 24.03.2020, the defendants had contacted the plaintiffs and requested to keep the deposit of aforementioned cheques in abeyance until the situation normalized. After easing down of lockdown restrictions, the plaintiffs had deposited the cheques with their bankers HDFC Bank Ltd, G.P.Road Branch on 01.06.2020. Much to the shock and surprise of the plaintiffs, all the 12 cheques were returned by the defendant's banker.

2.7. It is the further case of the plaintiffs that on account of dishonor of cheques, the plaintiffs through their advocates had issued notices all dated 17.06.2020 addressed to the defendants under Section 138 of the Negotiable Instruments calling upon the defendants to pay the outstanding sum admitted by them. The defendants through their advocates had issued reply notices all dated 02.07.2020 making false and frivolous claims that the loan was an interest free and cheques and acknowledgments issued by them were given under coercion and undue influence. The defendants on numerous occasions i.e., vide written acknowledgments dated 10.06.2019; 15.07.2019 and 02.12.2019; MoU dated 09.01.2020 had confirmed the balances payable to the plaintiffs.

2.8. It is the further case of the plaintiffs that despite unequivocally admitting liability, the defendants have not come forward to pay the sum of Rs.3,75,10,000/- to the plaintiffs. Hence the plaintiffs are constrained to lay the present suit for recovery of its legitimate dues jointly and severally against all the defendants. The plaintiffs pray that this Hon'ble Court may be pleased to pass a Judgment and Decree in favour of the plaintiffs and against the defendants.

3. After service of summons, the defendants entered appearance and filed this application for leave to defend the suit. The plaintiffs/respondents filed his counter objections. Both sides heard. Materials perused.

4. The learned counsel for the applicants/defendants reiterated the averments in his affidavit in support of application and submitted that this suit is not maintainable either in law or on facts and be dismissed in limine. There is no cause of action in the present matter. There is no any legal cause of action for this case and it is to be dismissed. They had availed a loan from the respondents in the year 2016 for a meagre amount and repaid the same in a time much ahead. The prior transaction between the petitioners and the respondents had strongly made applicants/defendants believe that it is not innocuous to avail loan from the respondents as in the aforesaid loan availed in the year 2016, the respondents tried to extract exorbitant interest from the defendants by cleverly manipulating dates and thereby calculating exorbitant interest which is false.

5. The learned counsel for the applicants/defendants further submitted that the respondents on different instances either through phone or in person

compelled applicants/defendants to avail loan from them making a proposal that the amount could be paid at their convenience without any interest and conditions, which is the sole reason that made applicants believe that they were unpretentious and not qualm their credibility. The respondents did not impose any terms and conditions for the repayment of the loan. Applicants made the repayment of the sum received from the respondents in several installments which protracted up till the month of March 2020. After conveying their intention to accept the offer, the plaintiffs/respondents paid a sum of Rs.2,87,40,000/- (Rupees two crores eighty seven lakhs and forty thousand only) to applicants which is morefully described in the annexure A of the affidavit. The Applicants issued a few cheques to the respondents as a security for the loan availed.

6. The learned counsel for the applicants/defendants further submitted that the considerable loan amount was repaid by applicants from 2018-2020 along with interest as described in annexure B and C. The respondents in numerous occasions and social gatherings and dinners would lure applicants to avail loan citing that they have ample of money in hand and would want only their money back, expressly conveying that there was standard minimal interest for the amount lent, which made applicants and the other petitioners believe in the interest of the respondents as they had requested applicants not to consider the loan given as a

commercial one. The respondents began to threaten applicants with dire consequences when the defendants requested them to return the cheques issued by them as a security stating that the loan is still in force and amount paid are only interest. The respondents not even considering the old age of the petitioners threatened the applicants with dire consequences and also black mailed them that a false police complaint would be initiated against the petitioners if applicants/defendants fail to accept to their commands and orders as a result of which they were caught in the vicious circle of depression and sadness.

7. The learned counsel for the applicants/defendants further submitted that from the year 2018-2020, applicants/defendants had took the best efforts to pay both the principal as well as the interest amount for the said loan given by the respondents, despite of difficult times that the entire world including applicants/defendants along with the other petitioners were striving hard to maintain their livelihood as a result of the Covid-19 pandemic. The respondents on various instances would verbally abuse them with un-parliamentary and unethical words thereby compelling them to pay the demand amount. On various instances the respondents used to forcibly enter into their office and attempt to tamper their hard earned reputation in the society by verbally abusing them in all possible means. The respondents engaged in all possible means to ensure that the

applicants/defendants dragged into the ditches by disrespecting the applicants in front of the office staff which had in turn had affected applicants business.

8. The learned counsel for the applicants/defendants further submitted that one of the respondents Mr.Rajesh Jaggi on behalf of the other respondents forcefully entered into their office forcibly and abuse them in order to extract huge amount of money unlawfully but were not successful in the same due to the constant reluctance in spite of the corporeal and perceptual violence but the respondents taking advantage of applicants old age forcibly obtained the signature out of coercion in the confirmation of balance, joint memo of understanding, cheques and promissory note.

9. It is further submitted that the applicants/defendants were not allowed to read the contents of the documents and therefore the applicants are not aware of its contents. After obtaining applicants/defendants signatures in the documents by forcible means, the respondents continued to threaten applicants using unparliamentary words and dire consequences. The respondents being known for their notorious activities through illegal means and process came to know the intention of these defendants of filing a criminal complaint and thus to earn a place in the good books of law has filed this vexatious suit for recovering a sum of Rs.3,75,10,000/- together with exorbitant interest and cost on the sole basis of a

sham promissory note created beyond applicants knowledge. The Applicants/defendants strongly deny the execution of this pronote in favour of the respondents. Since the execution of the pro-note itself in dispute since which has not been executed by applicants/defendants.

10. The learned counsel for the applicants/defendants further submitted that the alleged eruditions and acknowledgments was never freely signed by applicants or other petitioner, the respondents have obtained applicants signatures forcibly either under duress and coercion. The signature contained in the alleged pronote is not based on consent which clearly shows that the respondents has approached this Hon'ble Court with unclean hands and has suppressed material facts. The respondent had committed acts of fraud, misrepresentation with respect to the signature in the promissory note and that there is no consensus ad idem, meeting of minds in executing the same.

11. The learned counsel for the applicants/defendants further submitted that the present case applicants have repaid the loan amount at the right interval and there is no default on applicants part, further also submit that the documents and acknowledgments including the pronotes relied by the respondents to prove that there lies a default payment is not a valid one but one that is generated out of threat and coercions besides the present suit is filed with an ulterior intent of

concealing criminal acts done by the respondents. Unless applicants will be permitted by an order by this Hon'ble Court for leave to defend the above suit, applicants will be put into great hardship and irreparable loss and depriving their right of opportunity of being heard. The facts stated above leads to and raise substantial defence to defend the above suit and hence applicants pray before this Hon'ble Court to grant applicants leave to defend the suit. Hence, this application may be allowed.

12. The learned counsel for the respondents/plaintiffs reiterated his averments in counter stating that on perusal of the averments in the affidavit, it would be evident that it has been filed only for form and not on substance, given that there has not been any substantive averments on merits. The present leave to defend petition is not maintainable and cannot be taken on file of this Hon'ble Court as the defendants have not complied with the procedure prescribed under Order XXXVII Rule 3 (5) which mandates the LDP to be filed within ten days from the service of summons for judgment by the plaintiffs. The defendants had entered appearance on 04.02.2021 by serving notice of appearance on the plaintiffs. After service of notice of appearance by the defendants, the plaintiffs herein in compliance of Order XXXVII Rule 3 (4) had served the Summons for Judgment on the defendants on 12.02.2021 and the affidavit of service was filed before this

Hon'ble Court on 26.02.2021. The defendants were to file LDP within ten days from the service of summons for judgment. However, the defendants failed to file the LDP within the prescribed time limit and further also failed to file their counter in Application No.218 of 2021 filed by plaintiffs under Order XXXVIII Rule 5 of CPC.

13. The learned counsel for the respondents/plaintiffs further submitted that since the defendants had neither filed their LDP nor counter in A.No.218 of 2021, the same was brought to the notice of the Hon'ble Court by the plaintiffs and the Hon'ble Court taking note of the same vide its order dated 18.03.2021 had posted the matter before the Hon'ble Master Court on 07.04.2021 for further hearing. In the meantime, the defendants realizing that they have not filed the LDP, had filed and presented the same before the Registry. Even though the LDP was filed by the defendants, the same was not numbered and brought on the file of this Hon'ble Court on several occasions. After seeking several adjournments, the Defendants had numbered their LDP and had filed the same only on 05.07.2021. Hence, the LDP is time barred and cannot be accepted as there is 133 days of delay in filing the same.

14. The learned counsel for the respondents/plaintiffs further submitted that the contention of the defendants that the plaintiffs had tried to extract

exorbitant interest by manipulating dates in the earlier transaction and that the 1st defendant being an astute individual identified the same and escaped from the clutches in narrow fissure is both self serving and self defeating. The plaintiffs had charged exorbitant interest in the earlier transaction, the defendants could have very well avoided transacting with the plaintiffs subsequently. Instead, the defendants still chose to transact with the plaintiffs and availed further loans to the tune of Rs.2,76,50,000/-. The plaintiffs on different instances had compelled them to avail loans on the pretext that the same could be repaid on their own convenience without interest is preposterous.

15. The learned counsel for the respondents/plaintiffs further submitted that apart from the acknowledgment on 08.12.2017, the defendants vide written acknowledgments dated 10.06.2019; 15.07.2019 and 02.12.2019 and 09.01.2020 had confirmed the balances payable to the plaintiffs. Moreover, the defendants had also acknowledged liability by issuing promissory notes and cheques for the outstanding sum. It is absolutely ludicrous on the part of defendants to claim that the plaintiffs had compelled them to take loans and the said loans were interest free. After taking into accounts the part payments made by the defendants, a reconciliation of accounts was carried out between the plaintiffs and the defendants. On reconciliation of accounts, it was ascertained that a sum of

Rs.3,75,10,000/- is payable by the defendants. This fact is also corroborated with various written acknowledgments dated 10.06.2019; 15.07.2019; 02.12.2019 and 09.01.2020 wherein the defendants had unequivocally admitted liability. Such being the case, the defendants cannot dispute the sum of Rs.3,75,10,000/- which is payable by them.

16. The learned counsel for the respondents/plaintiffs further submitted that while on one hand the defendants state that they had agreed for an interest free loan. On the other hand, the defendants admits having paid the interest to plaintiffs. The fact that promissory notes were executed and cheques were issued by the defendants in clearly shows that the transaction was commercial in nature and the defendants were liable to return the loan with interest to the plaintiffs. The allegations of the defendants that the plaintiffs had threatened them with dire consequences and had black mailed to file a false police complaint and had further attempted to extract huge amounts by getting various documents signed is farcical and an attempt to mislead this Hon'ble Court. The allegations that the plaintiffs had abused and had tampered with the reputation of the Defendants and had also engaged in unlawful activities by visiting with recovery agents is nothing but a concocted story. The allegations that the 1st plaintiff had forcefully entered the office of the defendants and had obtained signature out of coercion in the confirmation of

balances, joint memo of understanding, cheques and promissory notes is erroneous, flawed and legally unsustainable. Apart from the confirmation of balances, the defendants had also unequivocally admitted liability and issued promissory notes and cheques on various dates.

17. The learned counsel for the respondents/plaintiffs further submitted that the contention of the defendants that the plaintiffs had filed the suit on coming to know of their intention of filing police complaint is totally false and misconceived. As regards the execution of the pronotes, the contention that the same was not executed by the defendants is false and baseless. The contention of the defendants that they have repaid the entire loan and there is no default on their part is false and that the entire acknowledgments were obtained by coercion is false and baseless. It is reiterated that the defendants had unequivocally admitted liability by issuing cheques, pronotes, confirmation of balances and memorandum of understanding. It is further reiterated that in the confirmation of balances and memorandum of understanding signed by the defendants. The defenses raised by the defendants in the leave to defend petition are nothing but moonshine defences and a clear abuse of process of this Hon'ble Court and hence deserve to be dismissed. It is prayed that this Hon'ble Court may be pleased to dismiss the leave to defend petition, consequently decree in the suit in favour of the plaintiffs.

18. Before going into the discussion about the merits of this application, at this stage it is relevant to look into the provisions relating to procedure in summary suits. It is to point out Order VII of Madras High Court, O.S. Rules which deals with special procedure in respect of certain suits.

Order VII Rule 1 runs as under;

A suit to recover a debt or a liquidated demand in money, evidenced by a document, or any money payable by the defendant with or without interest, arising on a negotiable instrument or on a bond or a contract for payment of a liquidated amount of money evidenced by a document, or on a guarantee where the claim arises against the principal in the manner aforesaid, may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed.

For the purpose of this order "Liquidated demand" means a demand for amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation.

Order VII Rule 5 runs as under;

In any case in which the plaint and summons are in the form prescribed in this order, the defendant shall not defend the suit unless he obtains leave to defend from the Master as hereinafter provided. In default of the defendant obtaining such leave, or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint, and in cases where interest is payable either by contract or statute, interest till the passing of the decree and further interest at six percent per annum from the date of the decree to the date of payment, and such sum for costs as may be prescribed.

Order VII Rule 6 runs as under;

(1) An application for leave to defend the suit shall be made to the Master supported by such evidence by way of affidavit as the defendant desires to place before the Court.

(2) Leave to defend may be given unconditionally or subject to such terms and directions as the Master thinks fit.

(3) The Master shall (a) if the defendant does not appear, on proof by affidavit of service of the summons on the defendant, or (b) if leave to defend is not granted, pass a decree for the amount claimed and costs.

19. In the Madras High Court O.S. Rules, no time limit is fixed to apply for leave to defend the suit by the defendant. Rule 5 says that in any case in which the plaint and summons are in the form permitted in this order, the defendant shall not defend the suit unless he obtains leave to defend from the Master. For the time limit to file leave to defend application, it is useful to refer the provision under Order V Rule 1 of O.S. Rules.

Order V Rule 1 runs as under;

If the defendant intends to defend the suit, he shall, within the period limited by the summons served on him, file in Court a written statement setting out the grounds of his defence in the form prescribed by the Code, and also stating his address for service:

Provided that a defendant may file his written statement within a further period of five days if the plaintiff or his advocate consents and signifies such consent by endorsement on the written statement. The costs of obtaining and granting consent shall be costs in the cause.

The defendant shall, within the said period, give notice to the plaintiff that he has filed a written statement, and of his address for service.

So when the defendants entered appearance, within the period limited by summons they have to file written statement or have to file application for leave to defend.

20. A. Similar procedure is prescribed in C.P.C. to deal with summary suits under Order XXXVII. It is also useful to go through the same, to decide this suit.

Order XXXVII of the Code dealing with the procedure for summary suit, in the relevant extract provides as follows:

R.2. Institution of summary Suits.- *(1) A suit, to which this Order applies, may, if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—*

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

(Under Order XXXVII of the Code of Civil Procedure, 1908)".

(2) The summons of the suit shall be in form No. 4 in Appendix B or in such other Form as may , from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

R.3. Procedure for the appearance of defendant.- *(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexure thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in court an address for service of notice on him.*

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a prepaid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed fr6m time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to

defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the court or judge to be just;

Provided that leave to defend shall not be refused unless the court-is-satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the court or judge may direct him to give such security and within such time as may be fixed by the court or judge and that, on failure to give such security within the time specified by the court or judge or to carry out such other directions as may have been given by the court or judge, the plaintiff shall be entitled to judgment forthwith.

(7) The court or judge may, for sufficient cause shown by the defendant, excuse the delay the defendant in entering an appearance or in applying for leave to defend the suit.

21. The code of civil procedure has stipulated time limit for applying leave to defend the suit by the defendants as 10 days from the date of service of summons for Judgment by the plaintiff. In the case in our hand, summons for Judgment has been served and the application for leave to defend is also filed. But

the leave to defend application is not filed within time limit mentioned in the summons as per original side rules and also it is not filed within 10 days from the date of service of summons for Judgment. The leave to defend application is filed with delay of 133 days as stated by the plaintiffs/respondents. But since leave to defend application was taken on file and counter is filed, this Court is of view that the delay is indirectly or impliedly condoned. Now the matter to be decided is whether the defendants are entitled to be granted leave to defend the suit.

22. At this time this court recollects the Judgment in IDBI Trusteeship Services Limited Vs Hubtown Limited case. The extracted relevant portion which runs as under

"...17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

23. Having in mind the above principles, this Court proceeded to decide whether the defendants/applicants have any bonafide probable or plausible, triable issues in their defence or whether the defences stated by the defendants are moonshine.

24. The applicants/defendants have stated in their defence that they have borrowed the loan amount for free of interest and to settle the principal amount according to their whims and fancies and ability. But in their affidavit itself the defendants admitted that they have paid the principal amount along with interest for the period 2018 – 2020. So this Court is not able to accept the contention of the defendants. Further it is highly unbelievable that a person gave such a huge amount of loan for free of interest and also asked to pay the same

according to the ability and whims and fancies of the borrower.

25. The defendants have admitted the borrowal of money. Further they have admitted the issuance of cheques. Further they stated that they paid part amount with interest. The transactions of money and execution of documents are admitted. But they denied the execution of pronote and stated that the documents were obtained by the plaintiffs by duress and coercion.

26. The defendants have stated that the documents were obtained forcibly under duress and coercion. They have stated that the plaintiffs came to their office, threatened them with dire consequences. Under coercion the defendants executed the documents. But after executing the documents without taking any criminal action, the defendants were kept quite. If the pronotes and the cheque leaves were obtained by coercion, the defendants might have filed a complaint or atleast issued a legal notice. But only after filing of this suit and after receiving the summons and at the time of filing this leave to defend application only, they have come forward with an allegation that the documents were executed under threatening and coercion which is nothing but only an afterthought.

27. Further the pronotes and cheques were issued on several different occasions and not at a single time. It is hard to believe that the documents were obtained under threatening in all occasions. The defendants at one stage denied the

execution of pronote and denied the signature. But later stated that the pronote was executed without consensus ad idem and meeting of minds. The defendants have taken contradictory stands about the execution of pronote which is also not believable.

28. The transactions of money and issuance of documents were admitted by the defendants. The defendants after talks, on different occasions acknowledged the balance amount and issued many cheques and the same is admitted. This Court cannot believe the words of the defendants that they were obtained under coercion in all occasions. The defences taken by the defendants do not seem to be bonafide. There is no plausible or possible, triable issue in this matter. The defences stated by the defendants are moonshines. Hence, the defendants are not entitled to be granted leave to defend the suit. Therefore, this application is dismissed.

SKG

MASTER

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ORDER PRONOUNCED

SKG

MASTER

10.02.2022